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IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

MICHAEL GRECCO PRODUCTIONS, INC.,

Plaintiff,

v.

FLAVORPILL PRODUCTIONS LLC,

Defendant.

Case No.: 17-cv-5128

ANSWER OF
FLAVORPILL PRODUCTIONS LLC

Defendants FLAVORPILL PRODUCTIONS LLC by its attorneys, MANGAN GINSBERG LLP, for its Answer to the Complaint make the following statements:

1. Deny that there was infringement or willful infringement in violation of 17 U.S.C. §§ 106 (1) and 501 et seq., or that plaintiff would be entitled to compensatory or statutory damages, as alleged in paragraph 1 of the Complaint.
2. Deny knowledge and information sufficient to form a belief as to the truth of the allegations set forth in paragraph 2 of the Complaint.
3. Admit the allegations in paragraph 3 of the Complaint, except to the address alleged as principal place of business.
4. Neither admit nor deny.
5. Deny the allegations set forth in paragraph 5 of the Complaint and leaves all conclusions of law to be determined by the Court.
6. Deny the allegations set forth in paragraph 6 of the Complaint and leaves all conclusions of

law to be determined by the Court.

7. Deny knowledge and information sufficient to form a belief as to the truth of the allegations set forth in paragraph 7 of the Complaint.

8. Deny knowledge and information sufficient to form a belief as to the truth of the allegations set forth in paragraph 8 of the Complaint.

9. Deny knowledge and information sufficient to form a belief as to the truth of the allegations set forth in paragraph 9 of the Complaint.

10. Deny knowledge and information sufficient to form a belief as to the truth of the allegations set forth in paragraph 10 of the Complaint.

11. Deny knowledge and information sufficient to form a belief as to the truth of the allegations set forth in paragraph 11 of the Complaint.

12. Deny knowledge and information sufficient to form a belief as to the truth of the allegations set forth in paragraph 12 of the Complaint. However, upon information and belief Fox Broadcasting owns the copyright to the show the “X-Files” which includes the characters that are portrayed in plaintiff’s photographs.

13. Admit the allegations in paragraph 13 of the complaint that Flavorpill Productions owns and operates Flavorwire, but denies that it displays “media images” or “advertising,” which terms are vague and undefined.

14. Deny knowledge and information sufficient to form a belief as to the truth of the allegations set forth in paragraph 14 concerning the plaintiff’s conduct, and denies that Flavorpill Productions has infringed any copyright or plural copyrights belonging to plaintiff. Furthermore, Flavorpill Productions denies that plaintiff exclusively owns the copyright to the contents of the photograph depicting Fox Broadcasting characters from the X-Files.

15. Deny the allegations set forth in paragraph 15 of the Complaint.

16. Deny the allegations set forth in paragraph 16 of the Complaint.
17. Deny the allegations set forth in paragraph 17 of the Complaint.
18. Admit that Flavorpill Productions did not make any requests of plaintiff concerning the promotional photograph of the Fox Broadcasting television show the X-Files in its news reporting about the show's revival, but deny all other allegations set forth in paragraph 18 of the Complaint.
19. Admit that the subject work was removed and deny all other allegations set forth in paragraph 19 of the Complaint.
20. Answering defendant reasserts all responses to paragraphs 1-19, as set forth above.
21. Deny knowledge and information sufficient to form a belief as to the truth of the allegations set forth in paragraph 21 of the Complaint.
22. Deny the allegations set forth in paragraph 22 of the Complaint.
23. Deny the allegations set forth in paragraph 23 of the Complaint.
24. Deny the allegations set forth in paragraph 24 of the Complaint.
25. Deny the allegations set forth in paragraph 25 of the Complaint.
26. Deny the allegations set forth in paragraph 26 of the Complaint.
27. Deny the allegations set forth in paragraph 27 of the Complaint.
28. Deny the allegations set forth in paragraph 28 of the Complaint, and note that plaintiff has taken no steps to seek an injunction against the answering defendant, permanent or otherwise.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

The Answering Defendant was permitted to publish the subject photograph pursuant to the Fair

Use doctrine, as the photograph was used in the ordinary course of Flavorpill Productions business in news reporting on the event of Fox Broadcasting's revival of the television show The X-Files, and that the photograph in question was a promotional photo, taken at the request of Fox Broadcasting and widely distributed for the purpose of promoting the X-Files. The contents of the photograph, which are two characters in the X-Files is not the property of plaintiff, but the property of Fox Broadcasting, and can only be understood to portray the two characters from that show as a promotional photograph.

SECOND AFFIRMATIVE DEFENSE

Plaintiff's claims are barred in whole or in part, by the statutes of limitations and/or laches.

THIRD AFFIRMATIVE DEFENSE

Plaintiff's claims are barred, in whole or in part, by the doctrine of estoppel.

FOURTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred in whole or in part, by doctrines of waiver and/or release.

FIFTH AFFIRMATIVE DEFENSE

Upon information and belief, Plaintiff entered into a licensing agreement with Fox Broadcasting and that licensing agreement permits media outlets to use the subject photograph for the purpose of promoting the X-Files and reporting information related to the show.

SIXTH AFFIRMATIVE DEFENSE

Plaintiff fails to state a claim upon which relief can be granted.

Dated: New York, New York
October 13, 2017

MANGAN GINSBERG LLP

/s/

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To: